

IT 06-3

Tax Type: Income Tax

Issue: Statute of Limitations Application

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**JANE DOE
Taxpayer**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**Docket # 05-IT-0000
Track # 0000
SS # 000-00-0000
Taxable Year 2000
Claim for Refund**

**Barbara S. Rowe
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue

synopsis:

On March 8, 2005 Jane Doe (hereinafter referred to as the "Taxpayer") executed a 2000 Form IL-1040-X that requested a refund of overpayment of her income taxes in the amount of \$2,593.00 due to taxes paid to Illinois rather than to the state of New York. The Illinois Department of Revenue (hereinafter referred to as the "Department") issued a Notice of Denial of the Taxpayer's claim for a refund on the basis that the statute of limitations for filing the amended return had expired. The taxpayer timely protested the denial. A hearing was held and after a thorough review of the facts and law presented, it is my recommendation that the requested refund be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. On March 8, 2005, Taxpayer filed an IL-1040-X requesting a refund in the amount of \$2,593 for the calendar year 2000, including \$1,867 for taxes paid to another state. The basis of the amended return was because the Taxpayer “Sold property in New York State, the accountant paid Illinois tax instead of New York. See attached documentation. Paperwork and copies sent to Illinois two years ago and never heard anything from the State of Illinois.” (Dept. Ex. No. 1)

2. Attached to the IL-1040-X was a copy of taxpayer’s unsigned 2000 Form IL-1040 dated March 29, 2001 showing tax due in the amount of \$1,841.00. Also attached was a Department of the Treasury Form 4797 showing capital gain on the sale of business property in the amount of \$63,115; correspondence from the New York State Department of Taxation and Finance Audit Division dated April 18, 2003 stating that the Taxpayer sold real property located in New York and requesting that the Taxpayer complete the questions on the form. A letter to the NYS Tax Department from the Taxpayer, dated May 16, 2003, stated that she finally received the tax notice on property sold in New York in 2000, and that her accountant had filed a State of Illinois return on the taxes due rather than a New York return. Attached was a copy of a New York State Department of Taxation and Finance Nonresident and Part-Year Resident IT-203 form for 2000 showing capital gains of \$63,115 and taxes due of \$3,500. (Dept. Ex. No. 1)

3. On April 22, 2005, the Department issued an LTR-405 Amended Income Tax Letter to the Taxpayer stating that the Department received Taxpayer’s “Form IL-1040-X on March 8, 2005, which is after the last date for filing a refund claim.” (Dept. Ex. No. 2)

4. Taxpayer asserted at the hearing that she had not been notified that she could be represented by an attorney. The Notice of Hearing stated at the bottom of the page in bold

letters: **PLEASE NOTE: YOU ARE ENTITLED TO BE REPRESENTED BY AN ATTORNEY IF YOU SO DESIRE.** (Tr. pp. 11-12)

CONCLUSIONS OF LAW:

The Illinois Income Tax Act (35 **ILCS** 5/101 *et seq.*, hereinafter referred to as the “Act”) at section 201 imposes a tax measured by net income on every individual, corporation, trust and estate for each taxable year after July 31, 1969 on the privilege of earning or receiving income in or as a resident of the State of Illinois. (35 **ILCS** 5/201)

Claims for refunds are addressed at 35 **ILCS** 5/909, which states in relevant part: “(d) Refund claim. Every claim for refund shall be filed with the Department in writing in such form as the Department may by regulation prescribe and shall state the specific grounds upon which it is founded.” In addition, 35 **ILCS** 5/911 states:

§ 911. Limitations on Claims for Refund.

(a) In general. Except as otherwise provided in this Act:

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed . . . , or one year after the date the tax was paid, which ever is the later; and

(2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period.

The Taxpayer filed her claim for refund almost four years after the date the return was filed which is well over the three years allowed by the statute of limitations. The Act does not provide any exceptions in order to allow a claim that is not timely filed. In Dow Chemical Co. v. Department of Revenue, 224 Ill. App. 3d 263 (1st Dist. 1991), the court considered Dow’s claim for refund under the Act and determined it was barred by the three-year statute of limitations. The court stated that the plain meaning of the statute is that the taxpayer has an affirmative duty

to file for a tax refund within the appropriate time period. *Id.* at 267 The present case is similar in that the Taxpayer had to take an affirmative step to preserve her right to a refund and she failed to do so by the deadline required under the Act.

Taxpayer asserted that she corresponded with the Department in 2003 and was not told at the time that she needed to file an amended return. (Tr. pp. 9-11) The Taxpayer was not able to produce a copy of an amended return filed in 2003 and had to admit, based upon that, that she must not have filed one. (Tr. p. 11) The statute of limitations prohibits the Department from issuing a refund that was not properly requested in the appropriate time period. As harsh as this result might seem, the law does not allow for a different conclusion.

For the foregoing reasons, it is recommended that the Department's LTR-405 Amended Income Tax Letter denying the Taxpayer's claim be upheld.

Barbara S. Rowe
Administrative Law Judge

February 16, 2006